

# Notice of Allowability

Application No.

09/905,657

Examiner

Tekchand Saidha

Applicant(s)

LECHELT-KUNZE ET AL.

Art Unit

1652

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 20 May 2004.
2. ☒ The allowed claim(s) is/are 47,49,51,53 and 55.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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**NOTICE OF ALLOWABILITY**

1. Applicants' on 05.20.2004 filed a Request for Continued Prosecution (RCE) under 37 CFR 1.114 based on parent Application No. 09/905657, which is acceptable and a RCE has been established. An action on the RCE follows.
2. This RCE has been filed along with an Information Disclosure Statement (IDS, or PTO 1449) under 37 CFR 1.97(b), and for the consideration of a single reference. A signed copy of 'Form PTO 1449' is enclosed.
3. Claims 47, 49, 51, 53 & 55, previously allowed, are pending and under consideration.
4. Claims 47, 49, 51, 53 & 55 were and are allowed, with the following Examiner's amendment previous made.

An examiner's amendment to the record, made in the **prior** 'Notice of Allowability' appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this **prior** examiner's amendment was given in a telephone interview with Raymond Harmouth on 02.10.2004.

**Cancel claims 48, 50, 52, 54 and 56 without prejudice.**

Amend and/or rewrite claims as follows :

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Claim 49 (rewritten)

A method of identifying herbicides, comprising the steps of contacting a polypeptide with the enzymatic activity of a very long chain fatty acid elongase and having an identity of at least 90% to the sequence of SEQ ID NO: 2 with a chemical compound or a mixture of chemical compound under conditions which permit the interaction of the chemical compound or the mixture of the chemical compounds with the polypeptide and determining the chemical compound which inhibits the enzymatic activity of the polypeptide.

Claim 51, line 2, after 'host cell containing a ' insert 'nucleic acid coding for a'.

Claim 53, line 2, delete 'biological' and replace with 'enzymatic'.

5. The following is an examiner's statement of reasons for allowance:

In view of Applicants' amendment to the claims and further consideration of Applicants arguments, all prior rejections are hereby withdrawn.

The application provides a method of identifying herbicides using very long chain fatty acid elongase from *Arabidopsis* of SEQ ID NO : 2 or variants thereof

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The prior art work of Barrett et al. [Biochemical Society Transactions (1994), 22(3), 260S] teach the effects of Tillam and its sulfoxide on fatty acid formation in barley and wheat leaves as well as pea seeds and their effects on fatty acid elongase activity. The prior art is free of use of such a sequence or variants thereof; and does not provide motivation to one of ordinary skill in the art to use the skills available in the area of molecular biology/enzymology to specifically use the elongase in the claimed method obvious.

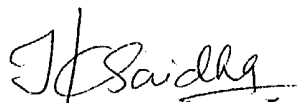
6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tekchand Saidha (Ph.D.) whose telephone number is (571) 272-0940. The examiner can normally be reached on Monday-Friday from 8:15 am to 4:45 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy, can be reached at (571) 272-0928. The fax phone number for this Group in the Technology Center is 703 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 571 272-1600.



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